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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

DARRELL E. EVENSON,

Plaintiff and Appellant,

v.

CHARLES HENSLEY BROWN,

Defendant and Respondent.

C059930

(Super. Ct. No.
SCSCCV07-1655)

Plaintiff Darrell E. Evenson initiated this unsuccessful action to quiet title to certain real property located in Happy Camp or, in the alternative, to partition the property and divide the sales proceeds with defendant Charles Hensley Brown, co-owner of the property.

At issue in this pro se appeal by Evenson is the scope and form of the relief fashioned by the court following a court trial. The court determined that Brown, not Evenson, is the legal owner of the property, subject to a constructive trust in Evenson's favor in the amount of \$2,400, plus post-judgment interest. The court ordered Brown to pay Evenson \$2,400 (plus interest) within 120 days and, if he fails, to execute a two-

year promissory note and deed of trust in Evenson's favor bearing interest at 10 percent. Finally, the court ordered that Evenson quitclaim the property to Brown upon payment of the debt or delivery of the note and deed of trust.

Evenson contends on appeal the court exceeded its authority in fashioning this remedy and erred in creating a constructive trust without clear and convincing evidence.

We find no error, and shall affirm the judgment.

BACKGROUND

In August 1998, Barbara Lynn Sharpe granted Brown and Evenson, as cotenants, her interest in certain real property located on Live Oak Drive in Happy Camp, Siskiyou County. The property is improved with a residence made from an older mobile home.

In November 2007, Evenson initiated this action in pro se, seeking to quiet title to the property in himself or, in the alternative, for partition. Evenson alleged that the property was purchased from Sharpe pursuant to an oral contract whereby Sharpe agreed to accept \$2,400 in cash and a Jeep station wagon. Evenson alleged he paid all of the consideration for the purchase and Brown failed to repay half of the consideration to Evenson within a reasonable time. Evenson also alleged he bought the property "for an investment," and Brown had been living on the property, except for a period while he was in prison, during which Brown's family continued to live there.

Brown answered the complaint and denied Evenson's allegations. Brown also alleged Evenson's interest in the

property is akin to a loan, which he admittedly never repaid, but that Evenson's only contribution to the consideration was "his share of the vehicle" given to Sharpe to complete the sale. Brown further alleged in his answer that the property was purchased as a home for him and his family, and that he has paid all taxes on the property since 1998.

A court trial on the matter was held on June 6, 2008. Each party represented himself at trial; a transcript of the trial was prepared from the audio recording of proceedings and appears in the record on appeal.¹

At trial, Evenson -- who at the time of the purchase lived in Marion County, Oregon² -- testified Brown approached him with news that "this lady was selling this land cheap" and asked if Evenson wanted to buy it. According to Evenson, Sharpe wanted \$2,000, a little house trailer owned by Brown, and a pickup truck. When the pickup did not work out, Evenson retrieved a Jeep he owned and gave that to her instead. Eventually, Evenson testified, he gave Sharpe \$2,400 and a Jeep. According to Evenson, he and Brown never discussed or agreed upon the value of the Jeep.

Evenson testified he and Brown verbally agreed that, if Brown performed his agreement to pay Evenson \$1,000 (roughly half of the amount paid to Sharpe), then Brown would get half

¹ Both parties treat this transcript as authentic and we shall do the same.

² Evenson now lives in Eureka, California.

the proceeds when they flipped the property and split the profit. Alternatively, Evenson testified, they agreed that if Brown "couldn't come up with" \$1,000, Brown would be entitled only to a 20 percent finder's fee when Evenson sold the property. Both Brown's and Evenson's names were on the deed to the property. Asked to explain why Brown's name was on title to the property, Evenson explained, "I'm just too trusting, I guess. . . . It was probably way too casually done, but that's the way in the mountains that sometimes you do things that way."

The property was never advertised for sale; Brown never paid, and Evenson never heard anything from him. Evenson went to the property, learned from Brown's wife that she was living there, discovered Brown had gone to prison, and subsequently sought to recover rent from Brown.

Brown also testified at trial. He contradicted all of Evenson's claims about the circumstances of the property's purchase, including the amount of consideration paid, and by whom it was paid. Brown testified the property "was never purchased as an investment," and he never discussed that possibility with Evenson. Rather, Evenson knew Brown needed to obtain a home for himself, his wife and grandchild before he began serving a prison sentence. Under these circumstances, Brown learned Sharpe wanted to sell the property so she could avoid paying the accrued property taxes and power bills. Brown negotiated with Sharpe an agreement by which she would take vehicles in trade; he introduced a letter of intent dated July 13, 1998, by which Sharpe and Brown agreed to exchange a

pickup "in good running condition" and a travel trailer for the property. But because "the things [Brown] had didn't coincide with what [Sharpe] actually needed," Brown gave Sharpe \$1,500, and Evenson loaned Brown some money to help Sharpe buy a mobile home.

Brown paid to remove the liens on the property for back taxes, water, and power; he evicted the tenant; and he improved the property by rebuilding (among other things) the kitchen and bathroom. According to Brown, the only reason Brown put Evenson's name on title was to "protect Evenson in case something happened to [Brown] while [he] was away [in prison], so that he would get his money back for the truck."

In an undated handwritten letter to Evenson introduced at trial, Brown wrote, "I know I still owe you \$2,500. . . . So whatever[] remain[s] after sale of truck let me know & I'll take care of it this year."

Although neither party requested a statement of decision, the trial court issued a two-and-a-half-page, single-spaced decision after trial that contained its findings and reasoning. This decision was entered verbatim as the judgment.

The decision indicates the court was persuaded by Brown's testimony concerning the nature of the property purchase transaction, and by Evenson's testimony concerning the amount owed by Brown. "After hearing and reviewing the evidence, the court is not convinced that [] Evenson and [] Brown had an agreement that they would jointly purchase the property with the intention that it would be immediately placed on the market and

sold. The actions of the parties indicate to the court that the parties intended that [] Evenson would loan [] Brown the value of the Jeep to allow [] Brown the opportunity to purchase the property as a residence for [] him and his family. The court took note of [] Evenson's failure to follow up on the listing for a quick sale of the property, [] Evenson's failure to specify the details about the repayment of the \$2,400 and setting the value and repayment for the Jeep, and his failure to take any action about repayment until more than two years following the purchase of the property. The court also notes that the letters produced by [] Brown do not indicate that [] Brown acknowledged co-ownership of the property. It seems to the court that [] Brown's letter indicate[s] an acknowledgement of the debt in the undisputed amount of \$2,500 and an attempt to at least partially satisfy that debt with the sale of his truck. They also indicate that [] Brown was very concerned about [] Evenson's efforts to remove his family from the property. The court believes that [] Evenson's eviction efforts were an attempt to secure payment of the money owed to him by [] Brown. The court believes that [] Evenson's demand for \$2,400 is consistent with [] Brown's acknowledgment of the debt owed to him in the amount of \$2,500.

"The court finds that [] Brown is the legal owner of the subject property subject to a constructive trust in [] Evenson's favor in the amount of \$2,400, plus legal interest accruing from the date of this decision until paid in full. [] Brown shall pay to [] Evenson the sum of \$2,400 plus interest at the rate of

\$.66 (66 cents) per day within 120 days of the date of this decision. [] Evenson shall execute a quitclaim deed in favor of [] Brown and deliver it to him immediately upon receipt of the amount owed. If [] Brown fails to pay the \$2,400 plus interest within 120 days, he shall execute a note and deed of trust in favor of [] Evenson with legal interest accruing at the rate of 10% per annum, total principal and interest due and payable within 2 years. [] Evenson shall execute a quitclaim deed in favor of [] Brown and deliver it to him immediately upon receipt of the note and deed of trust."

DISCUSSION

I. Evenson Has Not Shown The Court Exceeded its Power

Evenson sued Brown, in the first instance, to quiet title to the property. In the alternative, he sought to partition the property.

An action to quiet title can be used to establish title to real property in the plaintiff's favor, and to clear the title against any adverse claim: it seeks a determination that the competing claimant has no title. (See 5 Witkin, Cal. Proc. (5th ed. 2008) Pleading § 654, pp. 80-81.) Ownership of the property is also a fact to be determined in a partition action. (Code Civ. Proc., §§ 872.610, 872.810.) The court necessarily found against Evenson on this point: it determined that "Brown is the legal owner of the subject property" because "the parties intended that [] Evenson would loan [] Brown the value of the Jeep to allow [] Brown the opportunity to purchase the property as a residence for [] him and his family."

Evenson nonetheless challenges the court's findings as resting upon "blatant perjury by Brown."³ Such an argument is wholly ineffectual on appeal. The trial court did not believe Evenson's showing "that [] Evenson and [] Brown had an agreement that they would jointly purchase the property with the intention that it would be immediately placed on the market and sold." Rather, it credited Brown's trial testimony that Evenson loaned Brown some money that formed part of the consideration for Brown's purchase of the property as a home for his family and that Evenson's appearance on title as cotenant was only in the nature of security for the loan. Brown's testimony alone constitutes substantial evidence in support of the judgment because the testimony of a single witness is sufficient to support a judgment or finding unless the testimony is physically impossible or its falsity is apparent without resorting to inferences or deductions. (*Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002) 28 Cal.4th 1059, 1075; *People v. Cudjo* (1993) 6 Cal.4th 585, 608-609; see also Evid. Code, § 411 ["Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact"].)

Evenson has not attempted to argue Brown's testimony is impossible or inherently false, and we do not revisit the trial

³ We note that the record on appeal, and in particular the court's detailed written decision, shows a conscientious adjudication by the trial court of this matter without the benefit of counsel.

court's credibility determinations. Under California law, "[t]he power to judge the credibility of witnesses and to resolve conflicts in the testimony is vested in the trial court" (*In re Carpenter* (1995) 9 Cal.4th 634, 646.) "Where there is conflicting testimony, reviewing courts recognize that the trier of the facts has the better opportunity to judge the credibility of witnesses. In such a case the trial court's findings of fact, to the extent that they rest upon an evaluation of credibility, should be regarded as *conclusive* on appeal." (*Estate of Fries* (1965) 238 Cal.App.2d 558, 561, *italics added*; see also *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1204.)

Evenson's other argument -- that the court exceeded its authority in fashioning a judgment that creates a constructive trust in his favor and requires Brown to execute a promissory note for the loan amount -- fares no better.

In a partition action, the trial court has very broad powers. The statutory authority of the court in a partition action includes the power to ascertain the state of title to the property; to determine the interests of the parties; to determine whether the property should be partitioned in kind or by sale; to hear and determine all motions, reports, and accounts; and to make any necessary or incidental orders. (Code. Civ. Proc., §§ 872.120, 872.610, 872.620, 872.720, 872.810, 872.820.)

And, if the trial court finds the facts warrant it, those powers extend to the authority to transform co-ownership into a

trust relationship. "[T]he right to partition property is not always absolute and may be defeated by reason of an agreement between the cotenants, permitting a variance from the ordinary incidents of such cotenancy. [Citations.]" (*Rowland v. Clark* (1949) 91 Cal.App.2d 880, 882.) The trust resulting from the court's enforcement of such agreements is properly called a "resulting trust."⁴

⁴ "A constructive trust is a remedial device created primarily to prevent unjust enrichment; equity compels the restoration to another of property to which the holder thereof is not justly entitled. [Citation.] The principal constructive trust situations are set forth in two statutes. Civil Code section 2223 provides: 'One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.' Civil Code section 2224 provides: 'One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.' Thus, a constructive trust may be imposed in practically any case where there is a wrongful acquisition or detention of property to which another is entitled." (*Taylor v. Polakwich* (1983) 145 Cal.App.3d 1014, 1022.) In contrast, "[a] resulting trust is implied from the facts, and neither written evidence of an agreement nor a fraud on the part of the alleged trustee is essential to its existence." (*Rowland v. Clark, supra*, 91 Cal.App.2d at p. 883.) "'A resulting trust is not founded on the simple fact that money or property of one has been used by another to purchase property. It is founded on a relationship between the two, on the fact that as between them, consciously and intentionally, one has advanced the consideration wherewith to make a purchase in the name of the other. The trust arises because it is the natural presumption in such a case that it was their intention that the ostensible purchaser should acquire and hold the property for the one whose means it was acquired.'" (*Ibid.*) See also *Seabury v. Costello* (1962) 209 Cal.App.2d 640, 645 ["[a] resulting trust has frequently been called an intention-enforcing trust, as opposed to the fraud-preventing function of a constructive trust"].

Our review of the case law shows that resulting trusts are most often found by trial courts "[w]hen a transfer of real property is made to one person, and the consideration therefore is paid by . . . another, a trust is presumed to result in favor of the person by . . . whom such payment is made.'" (*Seabury v. Costello* (1962) 209 Cal.App.2d 640, 645.) For example, in *Rowland v. Clark, supra*, 91 Cal.App.2d 880, the Court of Appeal held that a resulting trust should be established as to any joint interest which is conveyed to another in favor of one who has paid the entire purchase price of the property, where it was intended and understood between the parties that the noncontributing party should enjoy a beneficial interest as joint tenant only if predeceased by the joint tenant who contributed the purchase price. (*Id.* at pp. 882-883.) Likewise, in *Socol v. King* (1950) 36 Cal.2d 342 at page 348, our Supreme Court stated that "the existence of a resulting trust will be presumed, to the extent that a gift was not intended, in favor of one who has paid the entire purchase price of property which is conveyed to the trust claimant and another as joint tenants" (See also *Seabury v. Costello, supra*, 209 Cal.App.2d at pp. 645-646.)

Here, the court found, consistent with Brown's testimony, that the parties agreed prior to their purchasing the property that Evenson's interest in the property would be akin to a secured loan. The court had the authority in this action to order the parties' legal ownership of the property modified to comport with their agreement. That conclusion is supported by

Brown's testimony. The trial court having concluded that what the parties really intended was that Evenson would lend Brown the funds to buy the property, there was no error.

II. Balloon Payment

Evenson argues the trial court, by ordering a balloon loan of two years duration, created totally new substantive rights under the guise of doing equity. His entire argument is: "The argument here is that if the court determines that Brown owes Evenson \$2,400, it cannot create a totally new right out of whole cloth, see *Taylor v. Polackwich* (1983) 145 Cal.App.3d 1014." We need not address contentions unsupported by reasoned argument. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.) Moreover, *Taylor v. Polackwich*, *supra*, 145 Cal.App.3d 1014, is inapposite. It held the trial court could not make a "rehabilitative award" allowing a plaintiff to reside in her ex-cohabitant's house conditioned on paying rent, after findings that she had no express or implied contract giving her an interest in the property. Here, the balloon loan would not be a new substantive right but would merely allow Brown more time to pay the \$2,400 which the trial court found he owed, if he did not comply with the order to pay it within 120 days.

Finally, Evenson argues the trial court exceeded its power by ordering Brown either to pay the \$2,400 within 120 days or, in the alternative, to execute a note with a balloon payment in two years. Evenson cites an inapposite estate/trust administration case, *Morrow v. Morrow* (1962) 201 Cal.App.2d 235, where an estate administrator sued his brother to set aside real

property deeds the parents had conveyed to the defendant before their death, or alternatively to have the court declare the deeds were held in trust for the benefit of all the heirs. (*Id.* at p. 236.) In the course of reversing the judgment on other grounds (failure to find undue influence or a trust relationship), *Morrow* added in dictum (*id.* at p. 242) that the judgment required the defendant "to account to the plaintiff '. . . in the alternative, [for] either the rents, issues and profits, together with interest, at the legal rate, or the reasonable rental value for the use and occupation of [the real property involved] together with interest at the legal rate. . . .' The function of a court is to decide issues and not to defer them for decision by a party litigant at a later time. Normally, a plaintiff in presenting a case of this kind would make proof in accordance with one theory or the other, and the court's subsequent decision would be definite and not in the alternative as here. This is not an interlocutory decree but a final judgment, and there should not be any loose ends." (*Id.* at p. 243.)

Thus, in *Morrow*, the judgment gave the defendant the option to choose to account for actual rents or for rental value. Here, in contrast, the judgment gave no such option. It ordered Brown to pay in 120 days (with 66 cents interest per day) or, if he failed to do so, to sign a note to pay within two years (with interest at 10 percent per year). Although the practical effect was to allow Brown to choose the two-year loan, the judgment did not leave any loose ends. This judgment is no more

objectionable than a permissible judgment ordering a defendant to return personal property or, if return is not possible, to pay its value and damages for its detention. (7 Witkin, *supra*, Judgment, § 32, p. 572.)

Evenson fails to show grounds for reversal.

DISPOSITION

The judgment is affirmed. Charles Hensley Brown shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

SIMS, J.

We concur:

SCOTLAND, P. J.

ROBIE, J.